

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
AIRMONT SENIOR CITIZEN CLUB :
for Redetermination of Exempt Organization :
Status under Articles 28 and 29 of the Tax Law. :

In the Matter of the Petition :
of :
CLARK CENTER SENIOR CITIZENS CLUB :
for Redetermination of Exempt Organization :
Status under Articles 28 and 29 of the Tax Law. :

DETERMINATION
DTA NOS. 813363-
813367

In the Matter of the Petition :
of :
HILLBURN SENIOR CITIZENS :
for Redetermination of Exempt Organization :
Status under Articles 28 and 29 of the Tax Law. :

In the Matter of the Petition :
of :
MONTEBELLO SENIORS :
for Redetermination of Exempt Organization :
Status under Articles 28 and 29 of the Tax Law. :

In the Matter of the Petition :
of :
RAMAPO SENIOR CITIZEN CLUB :
for Redetermination of Exempt Organization :
Status under Articles 28 and 29 of the Tax Law. :

Petitioners, Airmont Senior Citizen Club, Clark Center Senior Citizens Club, Hillburn Senior Citizens, Montebello Seniors and Ramapo Senior Citizen Club, c/o Clark Center, 59 Campbell Avenue, Suffern, New York 10901, filed petitions for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law.

A consolidated hearing was held before Catherine M. Bennett, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on August 2, 1995 at 1:15 P.M., with all briefs to be submitted by December 22, 1995, which date began the six-month period for the issuance of this determination. Petitioner appeared by Allan M. Simon, Esq. and Michael Klein, Esq., Office of the Town of Ramapo. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (John Matthews, Esq., of counsel).

ISSUE

Whether petitioners are entitled to tax exempt status as organizations that are organized and operated exclusively for educational purposes under Tax Law § 1116(a)(4).

FINDINGS OF FACT

1. Petitioners, Airmont Senior Citizen Club, Clark Center Senior Citizens Club, Hillburn Senior Citizens, Montebello Seniors and Ramapo Senior Citizen Club ("Airmont", "Clark", "Hillburn", "Montebello" and "Ramapo", or collectively "petitioners") filed applications for exempt organization certificates, dated March 1, 1994, February 18, 1994, February 19, 1994, February 18, 1994, and February 15, 1994, respectively. In such applications, petitioners claimed exempt status under Tax Law § 1116(a)(4) as organizations organized and operated for educational purposes.

2. Petitioners comprise 5 of the 18 separate senior citizen clubs organized and operated in the Town of Ramapo, Rockland County, New York. The bylaws of each organization representing the five petitioners, submitted with each application for exempt status, stated the clubs' purposes as follows:

"The organization is organized exclusively for the following purposes: education, health and recreation, public safety, culture and dissemination of information of the aforementioned activities to Ramapo Senior Citizens."

3. In addition to the individual clubs, there also exists in the Town of Ramapo an organization known as the Ramapo Senior Citizens Council ("Council"). The Council is comprised of one delegate from each of the individual clubs. It meets monthly, conducts educational programs, and disseminates information to the club representatives who, in turn, disseminate the information to the 18 clubs. The Council and the clubs are assisted significantly by the Town of Ramapo. For example, the Town Recreation Department includes a Senior Citizen Coordinator who acts as an advisor to the Council and the individual clubs. In addition, the Town provides annual funding to the clubs for trips, arts and crafts supplies, and equipment such as tables, chairs and loudspeakers.

4. Prior to petitioners' applications for exempt status, the individual clubs had been accustomed to utilizing the sales tax exemption of the municipalities where they are situated for their clubs' purchases. This was true of some of the Ramapo senior citizen clubs until about October 1992, at which time the New York State Department of Taxation and Finance advised the Town of Ramapo that its senior citizen clubs could no longer use the Town's sales tax exempt number when making club purchases. Such information was promptly distributed to the clubs and the practice ceased immediately. The Division further advised the method by which the clubs could apply for their own sales tax exemption numbers if they chose to do so.

In their consideration of applying for exempt status, the Council and the clubs met to review the application process and adopt new bylaws which would more clearly reflect their proposed educational nature. Certain technical amendments were also made to the bylaws to conform to the requirements of the Tax Law pertaining to a noninurement provision for the distribution of net assets to the township upon dissolution of a club.

The Council was the first of the Ramapo organizations to apply for its own sales tax exempt status. Its bylaws were amended in the same manner as the individual clubs (see, Finding of Fact "2"). By correspondence dated June 23, 1993, its application was approved and

exempt status granted. Thereafter, during February and March 1994, petitioners herein filed applications for exempt status. The revised bylaws were also submitted.

5. The applications for exempt status, in the case of each petitioner, included a Statement of Activities, which in pertinent part, provided the following:

"The purpose of the Club is to promote the emotional and physical well-being of senior citizens.

"The aforementioned is achieved through planned activities including sightseeing and theater trips, educational programs such as speakers (e.g. financial and estate planning, utility companies, non-profit agencies, senior citizen issues), classes such as memoir writing, crafts, and dancing, and health programs in conjunction with Good Samaritan Hospital of Suffern, New York, including blood pressure, flu prevention, cholesterol screening, and nutrition information."

6. Also accompanying their applications for exempt status were petitioners' responses to a questionnaire. The following responses, summarized where appropriate, were contained in such attachments:

"4. How often do you hold meetings? Describe what transpires at your meetings."

AIRMONT-The minutes are read, a treasury report is prepared and other topics of interest are discussed.

HILLBURN-Twice a month; club business and community affairs.

MONTEBELLO-Generally once a week.

"5. Do you publish newsletters or other printed matter? If so, submit several consecutive copies of your newsletters and any other printed matter you publish."

AIRMONT-We do not publish printed matter. A listing of all clubs is published with names and numbers of members.

CLARK-No.

HILLBURN-No.

MONTEBELLO-Yes, a newsletter covering the events of 1 or 2 months are published.

"6. Do you conduct lectures, discussion groups, forums or other similar programs? If so, submit a schedule of your programs giving specific dates, topics discussed, names of speakers and any relationship they have to your organization."

AIRMONT-We recently had a representative from Good Samaritan Hospital explaining the different services the hospital provides to seniors. A blood pressure nurse visits once a month.

HILLBURN-No.

MONTEBELLO-Lecturers included an accountant speaking on tax changes affecting seniors, a Congressional Representative, a Rockland County sheriff's department representative discussing auto theft, a professor from Rockland Community College, and the Mayor of the Village of Montebello.

- "7. Do you conduct classes in the arts, crafts or hobbies? If so, please list each activity, describe the instructions or training given to individuals and the dates held. Also, describe the qualifications of your instructors and any relationship they have to your organization."

AIRMONT-We have regular classes in ceramics on Mondays. No other arts and crafts.

CLARK-No.

MONTEBELLO-Classes in crafts, bridge, dance and aerobics are a part of the programs held.

RAMAPO-Craft classes are provided after each business meeting.

- "8. Do you provide counseling services? If so, please state the specific counseling services you provide and describe the qualifications of your counselors. Do you charge for your counseling services? If so, submit a schedule of your charges or suggested contributions."

None of the petitioners provide counseling services.

- "9. Do you conduct trips or tours? If so submit a schedule of your programs giving the specific dates, destinations and purposes."

AIRMONT-On April 13th we had a trip to Foxwood. We went to Paramus Park, museums and Atlantic City, and are planning a future trip to Atlantic City.

CLARK-Guest speakers from Good Samaritan Hospital regarding dietary issues and physical therapy; several luncheons; a picnic; a speaker from the Rockland County Sheriff's Department on crime prevention; a speaker on health reform legislation; and a holiday party.

HILLBURN-Trips to several theater shows; a council luncheon; a trip to Niagara Falls and the Finger Lakes; a trip to a theater and wax museum; and a Christmas party.

MONTEBELLO-Trips taken as indicated by the newsletter are

educational, therapeutic and social for the seniors. Some of the trips taken are as follows: a trip to the Ramapo Council Luncheon at the Brauhaus; a cruise to Bermuda; trip to Cape Cod; a trip to Atlantic City; a trip to Woodlock Pines; a trip to the Metropolitan Museum of Art in New York; a trip to see "My Fair Lady"; a trip to "Terrace on the Hudson"; and a trip to "Evita".

RAMAPO-Trips taken include one to Duck Cedar Inn for Irish music and cultural program; a dinner theater trip to see "Nunsense"; Raleigh Hotel social; dinner dances at the Suffern High School; a picnic at the Platzl Brauhaus; a shopping spree to the Galaria; and a trip to Woodlock Pines, for dinner and entertainment.

"10. Describe in detail all other programs and activities you have engaged in and are planning."

AIRMONT-We had a luncheon at King's Arms on April 7th. Further activities were temporarily curtailed due to room renovations.

CLARK-Valentine's Day party; a trip to the Liberty Science Museum; several luncheons; annual picnic; and a holiday party.

MONTEBELLO-A luncheon and show at Duck Cedar Inn; trips to Boston, Montreal, Pocono Manor, Las Vegas, a dude ranch and Atlantic City.

RAMAPO-A day on the "Spirit of New Jersey"; a picnic with another club; Oktoberfest at Platzl Brauhaus; and a 3-day trip to West Virginia.

"11. What percentage of your time and resources is devoted to social activities?"

AIRMONT-About 10% of our time is spent on social activities and getting seniors out to participate.

CLARK-About 25%.

HILLBURN-20%. These social programs and activities promote the health and well being of our members.

7. In response to the Division's request for a statement of receipts and expenditures for 1993 and the first five months of 1994, each petitioner provided the Division with the 1993 information and 1994 information covering January 1 through March 31 or April 30, 1994. The Division analyzed the income and expenditure information and concluded as follows for 4 of 5 petitioners:

a. Airmont-Over 78% of the expenditures for 1993 was disbursed on social and recreational activities. For the 1994 period, over 68% represented disbursements for merchandise related to social activities.

b. Clark Center-Over 98% of the expenditures for 1993 was disbursed on social and recreational activities. For the 1994 period, over 85% represented disbursements for social activities.

c. Hillburn-Over 96% of the expenditures for 1993 was disbursed on social and recreational activities. For the 1994 period, over 95% represented disbursements for social activities.

d. Montebello-Over 23% of the expenditures for 1993 was disbursed on social and recreational activities. For the 1994 period, over 94% represented disbursements for social activities.

e. Ramapo-Although information was submitted, the Division did not present the same ratio analysis.

8. Petitioners take issue with the fact that many of the educational speakers and information are provided at no charge, and thus not reflected in the expenditures. Petitioners argue that this results in an obvious distortion of the Division's conclusion, which attempts to draw a direct correlation between the expenditure of funds and the nature of the club's operation.

9. By letter dated July 25, 1994, the Division denied each petitioner's application for exempt status stating that petitioners failed to demonstrate that they were organized and operated exclusively for one or more exempt purposes under the statute. Specifically with respect to the operational test, the Division contended that:

"the information presented discloses that, although some of your club's activities may be educational in nature, it is substantially operated for social and recreational purposes. Such purposes are not among those specified in the statute for which sales tax exemption may be granted."

10. Petitioners appealed the denial by petitions, dated October 19, 1994, arguing that the Division incorrectly determined that it did not meet the organizational or operational test. Petitioner contested that the Division improperly based its determination on records of the clubs' activities which occurred or were planned prior to the amendment altering the primary purpose of the clubs to educational activities.

11. The Division filed its answers, dated January 11, 1995, alleging that petitioners fail both the organizational and operational tests for exemption from sales and use taxes.

12. Petitioners provided the testimony of numerous individuals who are members of the various clubs; Jill Tucci, the Town of Ramapo's Senior Citizen Coordinator; Herbert Reisman, the Town Supervisor; and State Assemblyman Sam Coleman. They each testified about the activities of the clubs and the value they provide to the senior citizens of the Town of Ramapo. They described in detail the types of functions attended, the speakers provided, the trips taken and the educational value of each club.

CONCLUSIONS OF LAW

A. Tax Law § 1116(a)(4) provides tax exempt status to a corporation for sales and use tax purposes if it is "organized and operated exclusively" for educational purposes. Under the regulations, a corporation must meet both the organizational and operational tests to qualify for a tax exemption (20 NYCRR 529.7[c], [d]).

B. The organizational test relates solely to the provisions of the organizing documents.

The regulations provide that:

"(i) An organization is organized exclusively for one or more exempt purposes only if its organizing documents:

(a) limit the purposes of such organization to one or more exempt purposes;
and

(b) do not expressly empower the organization to participate, other than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

(ii) In no case will an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its organizing documents, the purposes for which such organization is created are broader than the purposes specified in section 1116(a)(4) of the Tax Law. The fact that the actual operations of such an organization have been exclusively in the furtherance of one or more exempt purposes is not sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in the furtherance of one or more exempt purposes.

(iii) An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by terms of such articles, created for a

purpose that is not broader than the purposes specified in section 1116(a)(4) of the Tax Law"
(20 NYCRR 529.7[c][1]).

Here, petitioners' bylaws disclose that the purposes for which the corporation was formed was for "education, health and recreation, public safety, culture and dissemination of information of the aforementioned activities to Ramapo Senior Citizens." In addition, petitioners' statements of activities provide that the purpose of the club is "to promote the emotional and physical well-being of senior citizens." These organizing documents clearly empower petitioner to engage in activities that are recreational in nature. There does not appear to be any restriction on the nature of petitioners' activities as long as they are deemed to be enriching or beneficial to its members. Thus, because the organization's purposes, as defined by the organizing documents, are broader than the educational purpose specified in section 1116(a)(4), petitioners do not meet the organizational test.

C. Petitioners also do not meet the operational test. The operational test relates to the actual activities of the organization (20 NYCRR 529.7[d][1]). The regulations provide that an organization will be considered as "operated exclusively" for one or more exempt purposes "only if all of its activities accomplish one or more exempt purposes specified in section 1116(a)(4) . . ." (20 NYCRR 529.7[d][2]; emphasis added). The regulation further provides that an organization will not be regarded as "operated exclusively" if more than an insubstantial part of its activities is not in furtherance of an exempt purpose (id.).

The exempt purpose that remains the focus of petitioners herein is that of education. The regulations provide guidance on what type of activities qualify as "educational":

"Educational shall mean the instruction or training of the individual for the purpose of improving or developing his capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community. An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion. The following are examples or organizations which, if they otherwise meet the requirements of this section, are educational:

Example 1: An organization, such as a primary or secondary

school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

Example 2: An organization whose activities consist of presenting public discussion groups, forums, panels lectures, or other similar programs. Such programs may be on radio or television.

Example 3: An organization which presents a course of instruction by means of correspondence or through the utilization of television or radio.

Example 4: Museums, zoos, planetariums, symphony orchestras, and other similar organizations." (20 NYCRR 529.7[e][1][v].)

Here, in response to questionnaires, and confirmed by newsletters and minutes of club meetings, petitioners indicate that meetings are held once or twice a month, in some cases, and as often as once a week in another club, at which time club members discuss club business, and have a speaker, or some type of activity or entertainment. Petitioners stated that many of the guest speakers discuss services available to seniors. Some clubs conduct classes in arts, crafts or hobbies on a periodic basis. All the clubs plan outings, trips, luncheons, dinners and other entertainment on an ongoing basis.

The Division analyzed the expenditures by the clubs and concluded that a very significant portion in each case was allocated to social and recreational activities. Petitioners provided the credible testimony of members and Seniors Coordinator Jill Tucci, who all established that the speakers and other educational information was most often provided at no charge to the clubs. The entertainment and trip functions, on the other hand required the expenditure of club funds. Thus, petitioners established that if the Division's denial of exempt status was based solely, or even primarily on the income statement, this would be a distorted view at best, and perhaps even an erroneous conclusion. However, notwithstanding the expenditure issue, a review of the documents submitted and the testimony provided clearly indicates that a substantial segment of the clubs' functions is social and recreational, and the educational activities described appear to

be secondary to the overall social and recreational aspects of the monthly meetings, trips, picnics and dinners. Petitioners validly claim that social functions and educational experiences carry a different meaning for senior citizens than nonretirees and younger individuals. Perhaps a senior citizen is even more likely to transform what may appear to be a purely recreational trip into a learning experience, since their needs for stimulation, information, companionship and recreation have taken on a different meaning. I would agree there is an interaction between educational and recreational activities that stand apart from those engaged in by nonsenior citizens. However, I do not believe that in accordance with the law as it currently stands and the attendant regulations I can find that even given this "dovetailing" of purpose, that these were the types of educational experiences envisioned by the Legislature to qualify organizations as these for exempt status. Accordingly, it is concluded that since more than an insubstantial part of the clubs' activities are not exclusively in furtherance of the alleged educational purpose, the exempt status is properly denied. Thus, petitioners are not entitled to the tax exemption under Tax Law § 1116(a)(4) (see, Matter of Farmingdale Family of Retirees, Tax Appeals Tribunal, November 23, 1990).

D. The petitions of Airmont Senior Citizen Club, Clark Center Senior Citizens Club, Hillburn Senior Citizens, Montebello Seniors, and Ramapo Senior Citizen Club are hereby denied.

DATED: Troy, New York
June 20, 1996

/s/ Catherine M. Bennett
ADMINISTRATIVE LAW JUDGE